

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 392 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NEKMOHMMAD ALIAS TAPLO

HUSEINBHAI MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SJ DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Mr. Anil S. Dave for the petitioner and learned AGP Mr. Samir J. Dave for respondent nos. 1, 2 & 3. The detention order dated 31.12.98 passed by respondent no.1 - Commissioner of Police, city of Ahmedabad against the petitioner in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition

under Article 226 of the Constitution of India.

2. That the grounds of detention supplied to the petitioner under section 9(1) of PASA are produced at Annexure C to the petition which indicate that three criminal cases in respect to the offences made punishable under the Bombay Prohibition Act are registered against the petitioner on 2.6.98, 11.7.98 and 7.10.98 respectively at different Police Stations in the city of Ahmedabad. That in the said criminal cases, country-made liquor was seized from the possession of the petitioner. Over and above that, on assurance of anonymity, two witnesses have volunteered to supply information in their statements dated 21.12.98 against the petitioner and his bootlegging activity. The witnesses have referred to two alleged incidents dated 7.12.98 and 3.12.98. That in consideration of the aforesaid material, respondent no.1 has come to a conclusion that the petitioner is a "bootlegger" within the meaning of section 2(b) of the PASA. That after his arrest in the criminal case registered at Madhupura Police Station on 7.10.98 vide CR No. 5233/98, he got himself released on bail and continued his nefarious activity. That resort to the enforcement of general provisions of law is insufficient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

3. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at Bar that the last criminal case was registered against the petitioner on 7.10.98. That thereafter though the petitioner was released on bail on the very day, no incident or criminal case has been registered against the petitioner and the impugned order is passed on 31.12.98 after a long delay of two months. That the statements of anonymous witnesses are recorded on 21st December, 1998 in respect to the incidents which are alleged to have occurred on 7.12.98 and 3.12.98. Thus, the delay in taking action against the petitioner has vitiated the subjective satisfaction and has rendered the impugned order invalid. Reliance is placed on the observations made by the Supreme Court in the matter of Pradeep Nilkanth Paturkar v. S. Ramamurthi & ors. reported vide AIR 1994 SC 656.

4. Learned AGP Mr. Samir J. Dave relying on the affidavit filed by respondent no.1 dated 31st July, 1999 attempted to salvage the issue by submitting that the detaining authority was satisfied on the statements of the anonymous witnesses. That the petitioner was indulging in anti-social activity of bootlegging after

7.10.98 when he was released on bail and thereby there is sufficient explanation for delay and the order can not be said to be invalid.

5. The submission urged on behalf of the respondents could hardly be of any assistance to the respondents. It is required to be noted that the ground of detention formulated by respondent no.1 is devoid of any explanation regarding the delay for taking the impugned action on 31.12.98 though last offence against the petitioner was registered on 7.10.98. Furthermore, though there is no reference in the grounds of detention, respondent no.1 has stated in para 11 of his affidavit that the petitioner having been released on bail on 7.10.98 has continued his bootlegging activity and therefore, in order to prevent the petitioner immediately, other remedies were insufficient and as such the order is passed. It may be noted that neither in the grounds of detention nor in the affidavit any explanation is given as to why the less drastic remedy like cancellation of bail granted to the petitioner in the registered case vide CR No. 5233/98 was resorted to by the detaining authority. In the absence of any explanation, the impugned detention order suffers from two serious infirmities. The order is passed after a delay of about two months without any reasonable explanation and there is no explanation as to why the aspect of cancellation of delay has not been considered by respondent no.1 as detaining authority before passing the impugned detention order.

6. On the basis of the aforesaid discussion, the impugned detention order deserves to be quashed and set aside. Hence, the following order is passed.

7. The petition is allowed. The detention order dated 31.12.98 passed by respondent no.1 - Commissioner of Police, Ahmedabad city against the petitioner is hereby quashed and set aside and the petitioner detenue-Nekmohmmad Alias Taplo Huseinbhai Miyana is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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